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RULES AND PROCEDURE OF SPECIAL COMMITTEE ON INVESTIGATIONS

OF THE

UNITED STATES SENATE

SELECT COMMITTEE ON INDIAN AFFAIRS

DURING THE

ONE HUNDRED FIRST CONGRESS

1989

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RULES AND PROCEDURE OF SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. DECONCINI. Mr. President, I ask unanimous consent that the rules of procedure for the Special Committee on Investigations of the Select Committee on Indian Affairs as adopted by the special committee recently be printed in full in the Congressional Record.

There being no objection, the rules were ordered to be printed in the Record, as follows:

RULES AND PROCEDURE OF THE SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

RULE 1. CONVENING OF MEETINGS AND HEARINGS

1.1 *Meetings.* The committee shall meet at the call of the chairman. The members of the committee may call special meetings as provided in Senate Rule XXVI, except that actions of only two members of the committee shall be required to call special meetings.

1.2 *Notice.* The committee shall make public announcement of the date, place, and subject matter of any hearing at least one week before its commencement, except that a hearing may be called on shortened notice if the chairman determines that there is good cause to begin such hearing at an earlier date.

1.3 *Presiding Officer.* The chairman shall preside when present. If the chairman is not present at any meeting or hearing, the co-chairman shall preside. Any member of the committee designated by the chairman may preside at a hearing.

RULE 2. CLOSED SESSIONS

2.1 *Procedure.* All meetings and hearings shall be open to the public unless closed. To close all or part of a hearing or meeting, or a series of hearings or meetings for a period of no more than 14 days, the committee shall vote in open session by a record vote, including proxy votes, of a majority of the members of the committee. If discussion in closed session is necessary, a motion shall be made and seconded to go into closed session to discuss whether the meeting or hearing will concern the matters enumerated in Rule 2.2. Immediately after such discussion the committee shall return to open session and the meeting or hearing may then be closed by a record vote.

2.2 *Closed Session Subjects.* A meeting or hearing may be closed if the matters to be discussed concern: (1) national security or the confidential conduct of foreign relations; (2) committee staff personnel or internal staff management or procedure; (3) matters tending to reflect adversely on the character or reputation; or to invade the privacy, of any individuals; (4) matters that will disclose the identity of any informer or undercover law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or (5) matters that will disclose information relating to the trade secrets of financial or commercial information that must be kept confidential by reason of law or in order to prevent competitive injury; or (6) matters required to be kept confidential under other provisions of law or regulations.

2.3 *Witness Request.* Any witness called to testify at a hearing may submit to the chairman, no later than 24 hours in advance of a hearing, a written request to be examined in closed or open session. The chairman shall inform the committee of the request, and the committee shall take such action pursuant to Rule 2.1 as it seems appropriate.

2.4 *Broadcasting.*

(a) *Control.* Any meeting or hearing open to the public may be covered by television, radio, or still photography. Coverage must be conducted in an orderly and un-

obtrusive manner, and the presiding officer may for good cause terminate coverage in whole or in part or take other action to promote orderly proceedings.

(b) *Request.* A witness may request of the presiding officer on grounds of distraction, harassment, personal safety, or physical discomfort that during his or her testimony cameras, media microphones, and lights shall not be directed at the witness, and the presiding officer may take such action as he deems appropriate.

RULE 3. QUORUMS AND VOTING

3.1 *Reporting and Other Business.* Two members shall constitute a quorum for reporting a matter or recommendation to the Senate or for the conduct of other business.

3.2 *Testimony.* One member shall constitute a quorum for hearing testimony.

3.3 *Proxies.* Proxies shall be in writing, and shall be filed with the chief clerk by the absent member or by a member present at the meeting. Proxies shall contain sufficient reference to the pending matter to show that the absent member has been informed of it and has affirmatively requested that he be recorded as voting on it. Proxies shall not be counted towards a quorum.

3.4 *Polling.*

(a) *Subjects.* The committee may poll only (1) internal committee matters including the committee's staff, records, and budget; (2) authorization for steps in the investigation, including the authorization and issuance of subpoenas and deposition notice, requests for applications for immunity orders, and requests for documents; (3) other committee business, not including a vote on reporting to the Senate, that the committee at a meeting has designated for polling at a subsequent time.

(b) *Procedure.* At the direction of the committee or the chairman, as provided in Rule 3.4(a), polling sheets shall be circulated to each member specifying the matter being polled and the time limit for completion of the poll. If any member so requests, the matter shall be held for consideration at a meeting. The chief clerk shall keep a record of polls, including a written or oral disposition of polled matters. If the chairman, with the approval of a majority of the members, determines that the polled matter is in one of the areas enumerated in Rule 2.2, the record of the poll shall be confidential.

RULE 4. SUBPOENAS

4.1 *Authorization.*—Subpoenas may be authorized by the Committee, the Chairman or Co-Chairman, and may be issued by the Chairman, Co-Chairman or any member of the Committee designated by the Chairman or Co-Chairman. The Chief Clerk shall keep a log and a file of all subpoenas that have been issued.

4.2 *Return.* A subpoena duces tecum or order for documents may be issued whose return shall occur at a deposition or at another time and place other than at a hearing. When a return on such a subpoena or order is incomplete or accompanied by an objection, the chairman may convene a meeting or hearing on shortened notice to determine the adequacy of the return and to rule on the objection or may refer the issues raised by the return for decision by poll of the committee. At a meeting or hearing on such a return, one member shall constitute a quorum.

RULE 5. HEARINGS

5.1 *Notice.* Witnesses shall be given at least 48 hours notice, unless the chairman determines that extraordinary circumstances warrant shorter notice, and all witnesses shall be furnished with a copy of Senate Resolution 66, 101st Congress (1989), as amended, and of these rules.

5.2 *Oath.* All witnesses who testify to matters of fact shall be sworn unless the committee authorizes waiver of oath. The chairman or any member shall administer oaths to witnesses at hearings.

5.3 *Statement.* Any witness desiring to make an introductory statement shall file 10 copies of the statement with the chairman or chief clerk 48 hours in advance of the appearance, unless the chairman determines that there is good cause for a witness's failure to do so. A witness may be required to summarize a prepared statement if it exceeds 5 minutes.

Unless the Committee determines otherwise, a witness who appears before the committee under a grant of immunity shall not be permitted to make a statement or testify except to respond directly to questions posed by Committee members or Committee staff.

5.4 *Counsel.*

(a) *Presence.* A witness's counsel shall be permitted to be present during the witness's testimony at any public or closed hearings or deposition or staff interview to advise the witness of his or her rights; provided, however, that in the case of any witnesses who is an officer or employee of the government, or of a corporation or association, the chairman or the committee may rule that representation by counsel from the government, corporation, or association or by counsel representing other witnesses, creates a conflict of interest, and that the witness shall be represented by personal counsel not from the government, corporation, or association or not representing other witnesses.

(b) *Inability to Obtain Counsel.* A witness who is unable for indigence or other reason to obtain counsel shall inform the committee at least 48 hours prior to the witness's appearance, and the committee will endeavor to obtain volunteer counsel for the witness. Failure to obtain counsel will not excuse the witness from appearing and testifying.

(c) *Conduct.* Counsel shall behave in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject counsel to disciplinary action, which may include warning, censure, or ejection.

5.5 *Transcript.* An accurate electronic or stenographic record shall be kept of all testimony in closed and public hearings. At a witness's request and expense, access to a copy of a witness's testimony in public or closed session shall be provided to the witness. Upon inspecting the transcript, within a time limit set by the chief clerk, a witness may in writing request changes in the transcript to correct errors of transcription, grammatical error, and obvious errors of fact, the chairman or a staff officer designated by him shall rule on such requests.

5.6 *Impugned Persons.* Any person who believes that evidence presented, or comment made by a member or staff, at a public hearing, or at a closed hearing concerning which there have been public reports, tends to impugn his or her character or adversely affect his or her reputation may:

(a) file a sworn statement of facts relevant to the evidence or comment, which shall be placed in the hearing record;

(b) request the opportunity to appear personally before the committee to testify in his or her own behalf; or

(c) request that submitted written questions be used for the cross-examination of witnesses called by the committee. The chairman shall inform the committee of requests for appearance or cross-examination. If the committee so decides, the requested questions, or paraphrased versions or portions of them, shall be put to other witnesses by a member or by staff.

5.7 *Additional Witnesses.* The cochairman of the committee shall be entitled, upon a timely request made to the chairman, to call additional witnesses or to require the production of documents during at least one day of hearing.

RULE 6. DEPOSITIONS AND EXAMINATION OF RECORDS

6.1 *Deposition Notices.* Notices for the taking of depositions may be authorized by the Committee, the Chairman, Co-Chairman, or, in the event that a subpoena has been authorized pursuant to Rule 4, by the Chief Counsel. Such notices shall be issued by the Chairman, Co-Chairman, or the Chief Counsel. Such notices shall specify a time and place for examination, and the name of the staff member or members who will take the deposition. Unless otherwise specified, the deposition shall be in private. At the direction of the Chairman, Co-Chairman, or any member, a deposition may be taken by telephone. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear unless the party received a subpoena authorized pursuant to Rule 4.

6.2 *Counsel at Deposition.* Witnesses may be accompanied at a deposition by counsel to advise them of their rights, subject to the provisions of Rule 5.4.

6.3 *Deposition Procedure.* Witnesses at depositions shall be examined upon oath administered by an individual authorized by law to administer oaths, or any member who may be present and elect to administer the oath. Questions shall be propounded orally by staff members. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the committee staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from the chairman of the committee or a member designated by him. The chairman or designated member may refer the matter to the committee or rule on the objection. If he overrules the objection, he may order and direct the witness to answer the questions. The committee shall not

initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after having been ordered and directed to answer.

6.4 *Filing of Depositions.* The committee staff shall see that deposition testimony is transcribed or electronically recorded. If it is transcribed, the witness shall be furnished with a copy, or access to a copy, for review. No later than five days thereafter, if a copy is provided, the witness shall return it with his or her signature, and the staff may enter the changes, if any, requested by the witness in accordance with Rule 5.5. If the witness fails to return a signed copy the staff shall note on the transcript the date a copy was provided and the failure to return it. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his or her presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk. Committee staff may stipulate with the witness to changes in this procedure. Objections to errors in this procedure that might be cured if promptly presented are waived unless timely objection is made.

6.5 *Examination of Records.* The committee or the chairman may authorize the staff to inspect locations or systems of records on behalf of the committee.

6.6 *Written Interrogatories and Requests for Admissions.* Written interrogatories and requests for admission may be authorized and issued by the Chairman, Co-Chairman or any member designated by the Chairman, or Co-Chairman, and shall specify a date for filing an answer with the chief clerk. Written interrogatories and requests for admissions shall be answered under oath.

RULE 7. SENSITIVE OR CONFIDENTIAL MATERIALS

7.1 *Nondisclosure.* No member of the committee or its staff shall disclose, in whole or in part or by way of summary, to any person outside the committee and its staff, for any purpose or in connection with any proceeding, judicial or otherwise, any testimony taken, including the names of witnesses testifying, or material presented, in depositions or at closed hearings, or any confidential materials or information, unless authorized by the committee or the chairman.

7.2 *Nondisclosure Agreement.* All members of the committee staff shall agree in writing, as a condition of employment, to abide by the conditions of a nondisclosure agreement promulgated by the committee.

7.3 *Violations.* Allegations concerning unauthorized disclosure may be addressed by the committee or may be referred by a majority vote of the committee to the Select Committee on Ethics. Any member of the staff who fails to conform to the provisions of Rule 7 shall be subject to disciplinary sanction, including termination of employment.

7.4 *Applicability of Rules.* For purposes of Rules 6 and 7, committee staff include the employees of the committee, detailees and consultants to the committee, and the officers and employees of the Office of Senate Legal Counsel who are required by the chairman to work on committee business.

RULE 8. DETAILEES AND CONSULTANTS

The chairman shall have authority to use on a reimbursable basis, with the prior consent of the Committee on Rules and Administration, the services of personnel of any department or agency of the United States and shall have authority to procure the temporary or intermittent services of individual consultants or organizations.

RULE 9. EFFECTIVE CHANGES IN RULES

These rules shall become effective upon publication in the Congressional Record. These rules may be modified, amended, or repealed by the committee, provided that all members are present or provide proxies or if a notice in writing of the proposed changes has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken. The charges shall become effective immediately upon publication of the changed rule or rules in the Congressional Record, or immediately upon approval of the changes if so resolved by the committee as long as any witnesses who may be affected by the change in rules are provided with them.

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